

even where there may not be a sufficiency to satisfy all the creditors; it is a duty which such defendants owe to the just creditors of their testator or intestate ancestor or devisor, as well as to themselves, to make all proper disclosures, and to assist in having a fair distribution made by excluding all unfounded claims, so that those only which are clearly valid may obtain the full dividend to which they are entitled.

In this case, therefore, if it be true that *William S. Cochran* is now dead, it is evident that no further proceedings can be had until his legal representatives have been made parties.

Whereupon it is *Ordered*, that this case stand over until further order.

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After which the plaintiffs, by their petition, stated, that *William S. Cochran* made his will, by which he appointed *William H. Freeman* his executor, and died. Whereupon they prayed, that a *subpæna* might issue, &c. And it appearing from the proceedings, that the real estate which descended to the said *William S. Cochran*, had been converted into personalty; it was thereupon *Ordered*, that a *subpæna scire facias* issue against the said *Freeman* as prayed; which being returned summoned, the suit was ordered to stand revived in all respects against him; and was thereafter prosecuted to a conclusion.

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### SIMMONS v. TONGUE.

On the petition of a widow in a creditor's suit, a commission may be issued to assign her dower.—Another person may be admitted as a purchaser in place of him who was reported as such.—After the sale has been ratified, and the purchase money has become due, the purchaser, and his sureties, may be ordered to pay; and, on their failing to do so, the land may be re-sold at the risk of the purchaser.

Where it appears, in a creditor's suit, that there is any personal estate left, the executor or administrator should be decreed to account.—A decree for a sale establishes the whole or a part of the plaintiff's claim.—Where a creditor neglects, on being actually notified, to come in, under a creditor's suit, against the estate of the deceased as his principal debtor, such debtor's sureties will be discharged.—A discount in bar, if not distinctly specified and admitted, must be shewn and established by him who is to benefit by it, or it will be rejected.—Where there has been a partnership, the partnership debts must be first paid out of the joint estate; and the separate debts first paid out of the separate estate.

Where it appears doubtful upon the face of the voucher, the claimant must shew whether the deceased was principal or surety.—Where the deceased was bound only as a surety, the principal and co-surety, if there be one, must be shewn to